

Appl. No. 10/724,839
Docket No. P147
Response Dated May 2, 2007
Reply to Office Action mailed on April 10, 2007
Customer No. 27752

REMARKS

Response to Restriction Requirement

The Examiner has required, under 35 USC §121, election of a single group of claims for prosecution on the merits. A provisional election is made herein with traverse.

Traversal of Restriction Requirement

The Applicants respectfully traverse the restriction requirement as it is considered improperly made. The Examiner states that Group I (Claims 18-31 and 56-63) is directed to a kit comprising a composition comprising fructooligosaccharide and information on how to use it; that Group II (Claims 1-17) is directed to use of the composition of Group I for a method of enhancing total tract digestability of one or more dietary components in a companion animal; and that Group III (Claims 32-55) is directed to the use of the composition of Group I for enhancing calcium absorption, improving bone health, improving strength, improving physical activity performance, and combinations thereof.

The Examiner asserts that Groups I and II are related as product and process of making, but that the use of the composition of Group I can be accomplished by a materially different method, and cites US Patent Application No. 2003/0190309 to Zink ("Zink"), which teaches a lactic acid bacterial microorganism to improve or maintain gastrointestinal health in dogs and cats. The Applicants presume the Examiner meant to discuss a product and process of use.

The Examiner asserts that Groups I and III are related as a product and process of making. Again, it is presumed that the Examiner meant to discuss product and process of use. The Examiner asserts that the use of the composition of Group I can be practiced with a materially different method, again citing Zink for teaching that a lactic acid bacterial microorganism is used to improve or maintain gastrointestinal health in dogs and cats.

Finally, the Examiner asserts that Groups II and III are unrelated to each other. The Examiner asserts that Group II is drawn to the use of the composition of Group I for enhancing total tract digestability of one or more dietary components in a companion animal, which the Examiner asserts is unrelated to the use of the composition of Group I for enhancing calcium absorption, improving bone health, improving strength, improving physical activity performance, and combinations thereof.

The Examiner asserts that although all Groups are classified in the same class and subclass, searching all three Groups would be burdensome, due to requirements of the Examiner to complete a thorough search.

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The Applicants assert, however, that the compositions and methods defined by Groups I, II, and III have the same goal and effects – enhanced digestability of dietary components that is related to and yields improved health, strength, performance, etc. The Applicants therefore believe a search could be coextensive.

Furthermore, the methods of of the present invention including enhancing digestability of one or more dietary components using a fructooligosaccharide composition could not be provided by kits or compositions that do not contain a fructooligosaccharide.

Therefore, the Restriction Requirement should be withdrawn.

However, in compliance with the Restriction Requirement, the Applicants provisionally elect, with traverse, Group III, Claims 32-55, drawn to the use of the composition of Group 1 for enhancing calcium absorption, improving bone health, improving strength, improving physical activity performance, and combinations thereof.

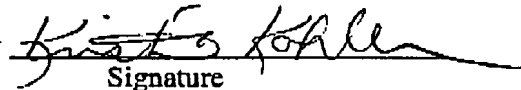
Conclusion

The Applicants therefore respectfully request that Examiner reconsider the Restriction Requirement and proceed to examination of the application on the merits. If the Examiner believes that personal contact would be beneficial for disposition of the present application, the Examiner is respectfully requested to contact the undersigned.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY

By



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Date: May 2, 2007
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